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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 896

GERALDINE DEFOE, *Appellant*

v.

ISIDORE SUCHMAN, BENJAMIN DUHL, PAUL GAIER, SOL BERGER, M. T. BROYHILL & SONS CORP., *Appellees*

Appeal From the Supreme Court of Appeals of Virginia

JURISDICTIONAL STATEMENT

GERALDINE DEFOE
pro se
2506 N. 20th Road
Arlington, Virginia

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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JURISDICTIONAL STATEMENT

Appeal From the Supreme Court of Appeals of Virginia

STATEMENT AS TO JURISDICTION

The appellant, pursuant to the United States Supreme Court Rules 13 (2) and 15, files this statement of the basis upon which she contends that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final judgment rendered in this proceeding.

OPINIONS BELOW

The Supreme Court of Appeals of Virginia without oral hearing entered a judgment on October 9, 1959, denying the Appellant herein a Writ of Error and Supersedeas and affirming a judgment of the Circuit Court of Arlington County entered on April 15, 1959, Judge Emery N. Hosmer presiding, At Law 6966 *Isidore Suchman, Benjamin Duhl, Paul Gaier, Sol Berger, M. T. Broyhill & Sons Corp.* v. *Geraldine DeFoe.* (See Appendix hereto, p. 1a).

Appellant's motion for a rehearing was denied on November 30, 1959, without a hearing (See Appendix hereto, pp. 1a, 2a).

This judgment is in conflict with a judgment of the Supreme Court of Appeals of Virginia entered on January 21, 1959, denying a writ of error and supersedeas to M. T. Broyhill & Sons Corp. and affirming a judgment of the Circuit Court of Arlington County enfered on September 12, 1958, as amended October 13, 1958, Chief Judge Walter T. McCarthy presiding, At Law 6351, *M. T. Broyhill & Sons Corp.* v. *Geraldine DeFoe.* (See Appendix hereto, p. 5a).

The Circuit Court of Arlington County in the present action, as set forth in its official Order entered on April 15, 1959, granted the appellees' motion to strike the evidence of the appellant both in defense of the unlawful detainer and in support of her counterclaim and granted a summary judgment to the appellees. Thereupon the jury returned to the jury box and was discharged.

The Court further ordered that the appellees, Isidore Suchman, Benjamin Duhl, Paul Gaier and Sol Berger (omitting the M. T. Broyhill & Sons Corp.) recover and have judgment against the appellant for possession and judgment in the sum of $1800 for rent accrued from July 1, 1957, to and including the month of October 1958 and court costs.

The Court further ordered that the appellant's counterclaim for malicious prosecution against the appellees, Isidore Suchman, Benjamin Duhl, Paul Gaier, and M. T. Broyhill & Sons Corp. be dismissed with prejudice as to each of them.

The appellant noted her exception to each of the foregoing rulings and indicated her intention to apply to the Supreme Court of Appeals of Virginia for a writ of error and supersedeas, and it was further ordered that the appellant post a suspending bond in the penalty of $2000. (See Appendix hereto, pp. 2a-4a).

ADDITIONAL RULINGS OF THE TRIAL COURT AS REPORTED IN THE CERTIFIED REPORTER'S TRANSCRIPT

The trial court denied appellant's motion to dismiss the action for lack of jurisdiction over the subject matter and over the parties plaintiff and relitigated issues which had been finally adjudicated;

Cited Rule 3:20 of the Supreme Court of Appeals of Virginia, as amended, as authority for removing the case from the jury and granting summary judgment;

Overruled appellant's pleading that the ruling of the Supreme Court of Appeals of Virginia of January 21, 1959, rendered the notices served in the name of M. T. Broyhill & Sons Corp. invalid;

Overruled appellant's plea of estoppel;

Refused to recognize the formal demand made upon the attorney for the appellees to produce Benjamin Duhl, a necessary witness at time and place of trial and stated that there was no way in which an out-of-state witness who had invoked the court's aid as a party plaintiff could be brought into court as a most necessary witness relating to his affidavit; and ignored the affidavit filed by Benjamin Duhl

upon which the summons was issued by insisting there was no such affidavit in the case.

In removing appellant's counterclaim from the jury for malicious prosecution, the trial court ignored the facts as contained in the Circuit Court's records (which were before him) of the two previous suits and the appellant's opening statement to the jury which was accepted in lieu of her testimony.

JURISDICTION

The Supreme Court of Appeals of Virginia denied a petition for writ of error and supersedeas affirming the judgment of the Circuit Court of Arlington County and that adjudication is not subject to further review by a State court.

This is a civil proceeding instituted by four New York owners and their Virginia rental agent for possession and accrual of rent which interlocks three simultaneous suits on the same cause of action, and a counterclaim thereto by the appellant for malicious prosecution.

The final judgment of the Supreme Court of Appeals of the State of Virginia was entered on October 9, 1959, and its denial of a rehearing was entered on November 30, 1959. Notice of appeal to the Supreme Court of the United States was filed in the office of the Clerk of the Supreme Court of Appeals of Virginia on February 29, 1960.

The Supreme Court of the United States has jurisdiction to review by appeal the judgment complained of by virtue of 28 U.S. Code 2157 (1) and 2101 (c).

The jurisdiction of this court is further invoked on the following statutory grounds: The Supreme Court of Appeals of Virginia has sanctioned the ruling of the trial court which granted appellees' motion to strike appellant's evidence both as to the unlawful detainer action and the

appellant's counterclaim for malicious prosecution and discharged the jury. The appellant was thereby deprived of her right under the Seventh Amendment of the Constitution and the Federal Statute under Title 28 of the U.S. Code.

The State statute involved is embodied in Rule 3:20 of the Supreme Court of Appeals of Virginia, as amended by the General Assembly, which the trial court upon the pleading of appellees' accepted as authority to strike the evidence and dismiss the jury.

Rule 3:20. Summary Judgment

Either party may make a motion for summary judgment at any time after the parties are at issue. If it appears from the pleadings the orders, if any, made at a pretrial conference, the admissions, if any, in the proceedings, *or, upon sustaining a motion to strike the evidence, that* the moving party is entitled to judgment, the court shall enter judgment in his favor. Summary judgment shall not be entered if the amount of damages or any other material fact is genuinely in dispute: (Italics supplied to show amendment.)

(Amendment adopted March 13, 1957, effective June 1, 1957.)

The Supreme Court of Appeals has sanctioned a departure from the accepted and usual course of judicial procedure by affirming decisions of the trial court on proper party, res judicata, estoppel, non-suit, summary judgment, effect of notice duly served on attorney for a party plaintiff to produce him as a material witness at time and place of trial in conflict with applicable decisions of this court and with decisions of other courts of appeal and in direct conflict with its own decision of January 21, 1959, which adjudicated the issues of the very notices, property management agreement, proper party, addition of owners, and amount of damages claimed for use and occupancy.

Cases believed to sustain the jurisdiction include:

State of N. C. v. Jackson, D.C. N.C. 1955, 135 F. Supp. 682.

Johnson v. Muelberger, N.Y. 1951, 71 S. Ct. 471.

U. S. v. Anderson, Clayton & Co., Ct. Cl. 1955, 76 S. Ct. 25.

Corn Products Refining Co. v. C.I.R., 1955, 76 S. Ct. 20.

Williamson v. Columbia Gas & Electric Corp., DC of Del. 1950, F. Supp. 874 Affirmed 186 F. 2d 464 Cert. Denied SC 743 WS 921.

Partmar Corp. v. Paramount Pictures Theatres Corp., Calif. 1954 74 S. Ct. 414.

Gowan v. Stevens, 76 A. 145-148, 83 Vt. 358.

Providential Development Co. v. U. S. Steel Co., CA Okla. 1956 236 F. 2d 277.

Burch v. Grace St. Building Corp., 168 Va. 329.

Lewis v. King, 157 La. 718, 103 SW 19, 22.

QUESTIONS PRESENTED

1. Did the Supreme Court of Appeals of Virginia affirm and sanction the violation of Appellant's statutory right by the trial court in granting Appellees' motion to strike appellant's evidence in defense of the unlawful detainer action and in support of her counterclaim for malicious prosecution and discharging the jury?

2. Did the Supreme Court of Appeals sanction a violation of a State statute when it affirmed the trial court's application of its own Rule 3:20—Summary Judgment?

3. Did the Supreme Court of Appeals deviate from accepted judicial practice in denying appellant's writ of error and affirming the judgment of the Circuit Court of Arlington County in the present cause on October 9, 1959, in direct contradiction of its judgment upon the identical issues involving the same parties in its judgment of January 21, 1959, denying a writ of error to appellee, M. T. Broyhill & Sons Corp.?

4. Did the Circuit Court of Arlington County acquire jurisdiction over the subject matter and parties plaintiffs which were rendered *res judicata* in a former action involving same issues and involving same parties?

5. Was the affirmation by the Supreme Court of Appeals of the instituting and maintaining of a series of suits upon the same cause of action in conflict with rulings of the Supreme Court and other courts of Appeal?

6. Was the affirmation by the Supreme Court of Appeals of the dropping of a party plaintiff, the M. T. Broyhill & Sons Corp by the trial Court in awarding summary judgment, which was in effect non-suiting which had been denied, and then reinstating them in dismissing the Apellant's counterclaim in conflict with applicable decisions of the Supreme Court and other courts of Appeal?

STATEMENT OF THE CASE

The proceeding herein was commenced on the 15th day of October 1958 when Isidore Suchman, Benjamin Duhl, Paul Gaier and Sol Berger of New York joined with the rental agent, M. T. Broyhill & Sons Corp. of Arlington, Virginia, and filed in the County Court of Arlington and served upon the appellant herein a 30-day notice to vacate while two cases upon the same cause of action were proceeding in the courts and the appellant had $2400 posted in the Circuit Court of Arlington for use and occupancy.

On October 31, 1958, an affidavit prepared in Arlington by Lewis & Tolbert, attorneys for appellees, was executed by Benjamin Duhl in New York and filed in the County Court. (R. 12) A summon was issued thereon demanding possession and rent in the amount of $1800 for accrual from July 1, 1957 through October 31, 1958, plus added damages from November 1, 1958 at the rate of $112.50 per month (R. 15).

The affidavit bases the present action upon three notices served in the name of M. T. Broyhill & Sons Corp., on July 3, 1957 (followed by a summons demanding rent in the amount of $112.50), At Law 6351 (R. 1) December 30, 1957 (R. 9) (followed by a summons demanding possession and past due rent in the amount of $112.50, R. 10) At Law 6615, and May 15, 1958, respectively, plus the notice of September 15, 1958 in the name of the owners and agent. (See Appendix, pp. 11a-14a).

The appellant filed an answer and counterclaim on November 13, 1958 (R. 17), setting forth that the present proceeding was a triplicate action covering the same premises and including the same period of time, and the same amount of rent and was in violation of the judgment of the first case At Law 6351 which was proceeding upon the petition of M. T. Broyhill & Sons Corp. for a writ of error and supersedeas to the Supreme Court of Appeals of Virginia and that appellant had $1850 posted in the Circuit Court covering use and occupancy through October 31, 1958; that a second case, At Law 6615, was waiting trial de novo on appeal to the Circuit Court, and the appellant had $550 occupancy bond posted in the Circuit Court making a total of $2400. Appellant counterclaimed in the sum of $1500 for malicious prosecution and moved the court to dismiss the action.

Appellant removed the cause to the Circuit Court on November 19, 1958, it becoming At Law 6966 and a demand was made upon C. Wynne Tolbert, attorney for the appellees, to produce Benjamin Duhl, a party plaintiff and affiant, at time and place of trial in the Circuit Court or to dismiss the action (R. 21).

The appellees filed a motion for summary judgment on November 21, 1958 (R. 22) for possession and damages in the amount of $2,025. The appellant filed an answer on December 1, 1958, setting forth factual and legal defenses in opposition to the motion (R. 14). The appellees moved the

court to nonsuit the Broyhill Corp. at the hearing on their motion for summary judgment, which the court denied. The appellees filed a Memorandum in support of their motion for summary judgment on December 4, 1958 (R. 29). The motion was denied on December 10, 1958 (R. 33).

The Circuit Court entered an order on January 21, 1959, stating a hearing had been held that day and the defendant had not appeared and it appearing that the summons is in lawful and proper form and the affidavit is also in proper form and sufficient in law to support the action; that actions pending in the Court do not legally preclude the plaintiffs from maintaining the action; and that none of the legal defenses set forth in defendant's answer are sufficient in law to abate the action, and ordered that defendant's legal defenses are denied, and that the defendants have 21 days to answer to the merits of this action (R. 31).

On the same day January 21, 1959, the Supreme Court of Appeals of Virginia denied the petition of M. T. Broyhill & Sons Corp. for a writ of error and supersedeas in Case No. 6351 thereby affirming the judgment of the Circuit Court entered on September 12, 1958, and as amended October 13, 1958 (R. 202), which found the rental agent not entitled by Paragraph 3 of the Property Management Agreement (R.) to institute and maintain an action for unlawful detainer; a summons claiming rent only insufficient to recover possession; set aside a judgment for possession and rent in the amount of $1350 covering period from July 1, 1957, to July 1, 1958; denied a motion to amend the unlawful detainer by designating the plaintiff therein as owners and the agent, and denied the motion for judgment of September 12, 1958, for rent that had accrued from July 1, 1957 to September 1, 1958, in the sum of $1,687.50. (R. 4, 6, 8).

This affirmation renders M. T. Broyhill & Sons Corp. an improper party in the present action and renders the notices served on July 3, 1957, December 30, 1957, and May 15, 1958, in the name of M. T. Broyhill & Sons Corp., upon

which the present action is predicated, null and void, and renders $1,687.50 of the amount of damages claimed res judicata.

On February 11, 1959, the appellant filed objections to the Order of the Circuit Court entered on January 21 and asked reconsideration thereof as she had been unaware of the hearing and in accordance with the Order filed an answer to the merits and amended her counterclaim from $1500 to $15,000. (R. 35).

A pretrial hearing was held on March 3 at which time the appellant's objections were overruled and motion for rehearing denied. The Appellant then moved to have Case 6615 dismissed as it was a duplicate action upon the same cause involving the same issues as Case No. 6351 and the court lacked jurisdiction as it was in wrong party as adjudicated by the Circuit Court and affirmed by the Supreme Court of Appeals of Virginia. The attorney for the appellees asked for time in which to study the matter and on March 6, 1959, filed notice of a motion to be heard on March 11 that the names of the owners be added to that of the M. T. Broyhill & Sons Corp. in Case No. 6615 and that it be consolidated with the present action because, "the identical issues and facts are present in both actions." The court took no further action on this issue. The Appellees moved the court for the right to take the depositions of the Appellees pursuant to § 8-305 of the code of Virginia and the motion was granted. Thereupon the Appellant notified the Appellees' council that she intended to ask for subpoenas for the Appellees. Both cases 6966 and 6615 were set for trial by jury on April 7, 1959. Pretrial statement entered on March 16 (R. 41).

Trial was held on April 7, 1959, Judge Emery N. Hosmer presided. C. Wynne Tolbert appeared for the appellees, none of whom was present, and the appellant appeared in person. A jury was impaneled and sworn and retired to the jury room.

Attorney for appellees moved that the unlawful detainer action and counterclaim not be tried at the same time, stating that a counterclaim for malicious prosecution would have to depend upon a result in the previous case or in the case itself, which was favorable to her and unfavorable to people who brought the suit and requested that the hearing at this point be confined to unlawful detainer. The motion was overruled (Tr. 60-63).

He then moved the court to exclude from the jury any reference to previous actions between these parties and that any terminated in any particular manner. The motion was overruled. (Tr. 64-65)

The Appellee proffered certain exhibits and Depositions taken in New York and Appellant moved to strike the depositions. (Tr. 67-68)

Appellant moved the court to produce Benjamin Duhl, a party plaintiff and affiant to the affidavit as there is conflict between his sworn affidavit and the facts to be developed by the record and testimony of witnesses. The motion was overruled, the court stating . . . There is no lawyer or party who has ever devised a way for a court of this State or the process of this State to compel a person residing in another State to attend in this State in a civil case of this kind, and that his deposition was allowed in the pretrial order, "the notice appears to be proper, the deposition appears to be proper in itself. And your motion to strike it out is overruled." The Appellant called the court's attention that they did not take Mr. Duhl's deposition, that they took every one else but not Mr. Duhl the main party plaintiff and affiant. The Court: "Well, there is no deposition of Mr. Duhl, as I see it." The Appellant then stated that her understanding of the Statute books is that if a notice is served upon their duly authorized agent to produce them, he is obligated to appear before the court. (Tr. 69-72)

The trial judge confused the *deposition* of Isidore Suchman sworn to on behalf of himself and Paul Gaier and Sol Berger with the *affidavit* of Benjamin Duhl and insisted throughout the trial that there was no such affidavit. (Tr. 142-144)

The Appellant moved the court to dismiss case No. 6615. The motion was denied. (Tr. 71)

The Appellant then moved to dismiss case No. 6966 the case at bar on grounds of improper party, res judicata, a series of suits upon same cause of action and that one of them had been finally adjudicated in her favor, and estoppel. The motion was denied. (Tr. 73-76)

The jury was recalled to the jury box.

Mr. Tolbert made his opening address. (Tr. 76-81)

The Appellant made her opening address (Tr. 81-92) This address was accepted as Appellant's evidence in lieu of testimony.

Mr. Tolbert asked to make a motion out of the presence of the jury and the jury retired to the jury room. He then moved the court to strike the Appellant's reference to the notices, the other suits, the mentioning of cause of malicious intent and to strike all parts of her statement pertaining to malicious prosecution "because if even the truth, if there is any evidence that she brings before the court on the basis of any of those statements, they are not sufficient to entitle her to an award of any sum of money for the alleged acts that she lays to each of the Plaintiffs. The Appellant objected to the motion. The motion was denied. (Tr. 92-95) The jury returned to the jury box.

Exhibits were formally offered by the Appellees and admitted.

Appellees then placed the Appellant on the stand as an adverse witness. (Tr. 100-114)

Appellee then placed Mrs. Vivian Broyhill Roberts upon the stand and she was cross-examined by the Appellant. (Tr. 115-124)

Attorney for Appellees read to the jury the Deposition of Isidore Suchman and rested his case. (Tr. 124-128)

The court adjourned for lunch until 1:30 p.m.

The court convened at 1:39 p.m. and the jury returned to the jury box. The Appellant placed her mother Mrs. Eva P. DeFoe upon the stand who testified by direct examination. (Tr. 130-139) Was not cross-examined and was excused. The appellant reminded the court and the jury that since Benjamin Duhl refused to testify in person or by deposition, the testimony of Mrs. Defoe as to her conversations with him would have to stand. (Tr. 139)

Appellant then recalled Mrs. Roberts to the stand (Tr. 139-142) Appellant then asked to place Mr. Tolbert on the stand to testify as to the affidavit prepared by him and executed by Mr. Duhl as there has to be some development. The court again insisted that the affidavit she was talking about is not a part of this case and is not material to the case (Tr. 142-143) and refused to place Mr. Tolbert on the stand. This attitude of the court confused the Appellant and she started to explain that the affidavit and the pleading of the Appellees at trial based the present action on the notices when the court stated it had already passed on that and the question of res judicata or estoppel had been denied and refused. (Tr. 143)

The Appellant asked that her address to the jury and her summary to the jury act as testimony because they stated the facts and the court so instructed the jury. (Tr. 148)

The Appellant then rested her case and the jury retired to the jury room.

The Appellees then moved for summary judgment on the claim for unlawful detainer and asked possession on the ground that there was no evidence which constitutes a defense and for rent from July, 1957 the April 1, 1959, and also for summary judgment on the Appellees counterclaim on the grounds of no evidence to justify a jury to sustain a verdict of the jury. That in addition to the suit which was filed and which has been disposed of adverse to the Appellee M. T. Broyhill there were new parties here and no evidence of malicious prosecution: (Tr. 149-151) The Appellant objected stating a summary had been denied in the circuit court and that she had set out in the pleadings in this case the reasons he could not be granted a summary judgment and reviewed those reasons. (Tr. 152-162)

The court than asked Mr. Tolbert what he had to say about the Broyhill Corp. as a plaintiff in this action, and he said the only reason they were in was that the Appellant did not want them out of it. That they were willing to non-suit. The Appellant pointed out to the court that a nonsuit is not available to cure a misjoinder of parties plaintiff and that should there be a nonsuit of the Broyhills would be diversity of citizenship and upon motion would have to dismiss the case and it would be brought in the proper court. The Court asked her if she wanted the Broyhill Company in the suit or out of it and she replied if they were out of it she would question the court's jurisdiction.

The court then said there had been testimony by Mrs. DeFoe arising out of her conversation with Mr. Duhl that the rent would be accepted and that they should not move and it was going to be submitted to the jury and the motion for summary judgment on possession was denied. (Tr. 164)

The Appellee asked to be heard and relitigated case No. 6351 and the ruling of Judge McCarthy and repeated that the present case is three-pronged—relying on all three

notices (Tr. 164-170) and the Appellant then renewed her motion to dismiss the case. The court still said he thought the testimony of Mrs. DeFoe should be considered by the jury (Tr. 171) and that the rule was still in effect that on a motion to strike the evidence a case is before a jury and the evidence is striken, the jury is still asked to return a verdict. (Tr. 174)

Mr. Tolbert said he had just found the rule 3:20 of the Supreme Court of Appeals of Virginia that a court is sustaining a motion to strike the evidence, the court does not have to refer that any more to the jury. The court: "the language which has been added is ". . . or upon sustaining the motion to strike the evidence" that the moving party is entitled to judgment.

The court then granted the motion to strike the Appellant's evidence and granted motion for summary judgment (Tr. 176-177) to which the Appellant excepted, and after lengthy argument over damages versus rent between the court and the Appellee, the Court struck the evidence of the Appellant and granted summary judgment for $1800 to which the Appellant excepted. (Tr. 177-181)

The Court then ruled there was no evidence upon which the counterclaim could be submitted to the jury and granted the Appellees motion to strike the Appellant's evidence and granted summary judgment for the Appellees on the counterclaim to which the Appellant excepted. (Tr. 182)

The court then stated that the summary judgment for the Appellees on the unlawful detainer would, of course, omit the Broyhill Company as a Party Plaintiff, but that the summary judgment for the Appellees on the Counterclaim will include the Broyhill Company. (Tr. 182)

The Appellant noted her exceptions and intention to appeal to the Supreme Court of Appeals of Virginia and a suspending bond was set in the amount of $2000. (Tr. 183)

Thereupon the Appellant reminded the court that there was still unfinished business before the court and the court said the second case 6615 and that the only thing pending in that case is to dismiss the case and release the bonds, with costs to the Appellant. Appellees' attorney stated that he had no objection and the court said well prepare the order dismissing the suit and releasing the bonds.

Thereupon the jury was recalled to the jury box and dismissed, the court stating "this case has been disposed of."

The Order of the Circuit Court was entered on April 15, 1959, and Appellant filed a Notice of Appeal and Assignment of Errors to the Supreme Court of Appeals of Virginia on April 28, 1959. Petition for Writ of Error and Supersedeas was filed in the Supreme Court of Appeals of Virginia on June 13, 1959. Appellees did not file a brief in opposition to the Petition.

On October 9, 1959, the Petition was denied and Appellant filed a Petition for a Rehearing by the Full Court, which was denied November 30, 1959. Appellant filed her Notice of Appeal to the Supreme Court of the United States on February 29, 1959, in the Office of the Clerk of the Supreme Court of Appeals of Virginia.

REASONS WHY THE JUDGMENT OF THE CIRCUIT COURT OF ARLINGTON COUNTY SHOULD BE REVERSED

The rulings of the Circuit Court as entered on April 15, 1959, are contrary to the law and to the evidence. There are many issues of import involved and legal and lawful interpretations are badly needed. This ruling is in conflict with the rulings of the Circuit Court on the same issues by the Chief Judge and will now set a precedent whereby no tenant will have any rights in the State of Virgina.

There were no precedents in the County or Circuit Court to follow during the proceedings in these triplicate actions and the Appellant in her research of the records of the court found disregard for proper party and was horrified to find that tenants had been served writs of restitution upon the five-day notices with no summons or court action whatsoever. After the rulings of the Chief Judge in 6351 thta case was cited by the County Court.

The Appellant has been forced to defend herself against illegal actions for nearly three years under the most bitter harrassment and unbearable living conditions. The actions of the appellees have taken a toll upon her health, and caused a great financial burden. By the time of trial in this last action had so damaged her otherwise perfect attendance record that she was forced to resign from three well-paying positions. She could not do justice to her employers and make the innumerable court appearances in addition to the constant preparation of the written papers required.

The Appellant is not pro se through choice but by the reluctance of attorneys practising in Arlington to take the case involving the Broyhills and disappointments in the performance of two attorneys, whom she was able to retain. Now that it has reached the Supreme Court of the United States and is not limited to Virginia lawyers the fees asked are prohibitive.

The Appellees had a legal recourse open to them of which they refused to avail themselves. The entire matter should have been settled and over within a few months at most, but was paramounted to enormous proportions covering additional issues of law as it progressed. The Appellant had no choice but to proceed.

The Appellant feels there will probably not be another opportunity for a matter of this nature to be righted and to set a much-needed precedent for the Virginia reports.

WHEREFORE the Appellant respectfully requests this tribunal to reverse the judgment.

GERALDINE DEFOE
pro se
2506 North 20th Road
Arlington, Virginia

APPENDIX

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 9th day of October, 1959.

The petition of Geraldine DeFoe for a writ of error and supersedeas to a judgment rendered by the Circuit Court of Arlington County on the 15th day of April, 1959, in a certain proceeding then therein depending, wherein Isidore Suchman and others were plaintiffs, and the petitioner was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition, and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said circuit court.

A Copy,

Teste:

H. G. TURNER
Clerk

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 30th day of November, 1959.

GERALDINE DEFOE, *Plaintiff in error.*

against

ISIDORE SUCHMAN, et al., *Defendants in error.*

Upon a Petition to Rehear

On mature consideration of the petition of Geraldine DeFoe, plaintiff in error, to set aside the judgment ren-

dered herein, on the 9th day of October, 1959, and grant a rehearing thereof, the prayer of the said petition is denied.

A copy, teste:

H. G. TURNER
Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

AT LAW No. 6966

ISIDORE SUCHMAN, et al., *Plaintiffs*

v.

GERALDINE DEFOE, *Defendant*

Order

THIS CAUSE, having been removed from the County Court of Arlington County, came on the 7th day of April, 1959, to be heard before a jury duly selected, sworn and impanelled composed of the following named persons, to-wit: Lewis H. Bean, Eustice H. Waller, Jr., W. George Goold, Samuel Friedman, J. Walter England, Burton Kephart and Grier Sherrill, upon the summons for unlawful detainer filed by the plaintiffs, and responsive pleadings thereto; upon the Counter Claim filed by the defendant, and responsive pleadings thereto; and upon the evidence introduced in support of the said pleadings of the parties.

Whereupon, at the conclusion of all of the evidence, out of the presence of the jury, the plaintiffs moved to strike the evidence of the defendant which she had offered both in defense of the unlawful detainer action and in support of her Counter Claim, and to enter a summary judgment for possession of the premises detained and damages for use and occupancy of the premises during the time the premises

were detained from the plaintiffs for the period July 1, 1957, to this date.

Upon Consideration Whereof, the Court being of the opinion that the defendant's evidence is insufficient in law, both as a defense to the unlawful detainer action and in support of the defendant's Counter Claim; that there is no material fact genuinely in dispute to be submitted to a jury for determination; that the plaintiffs, Isidore Suchman, Benjamin Duhl, Paul Gaier, and Sol Berger, are entitled to judgment for possession of the premises and rent accrued in the sum of One Thousand, Eight Hundred Dollars ($1,800.00) to the date that this action was instituted; but that the said plaintiffs are not entitled to recover in this proceeding rent which has accrued during the pendency of this suit in the amount of Six Hundred Seventy-five Dollars ($675.00), or damages for use and occupancy of the premises during said period; it is, therefore,

Adjudged and Ordered that the evidence offered by the defendant, both in defense of the unlawful detainer action and in support of the Counter Claim, be, and it hereby is, stricken.

Thereupon, the jury returned to the jury box and was discharged by the Court.

It Is Further Ordered that the plaintiffs, Isidore Suchman, Benjamin Duhl, Paul Gaier, and Sol Berger, recover and have judgment against the defendant, Geraldine DeFoe, for possession of premises 2145 North Pierce Street, Apartment 4, Arlington County, Virginia.

It Is Further Ordered that the plaintiffs, Isidore Suchman, Benjamin Duhl, Paul Gaier, and Sol Berger, recover and have judgment against the defendant, Geraldine DeFoe, in the sum of One Thousand Eight Hundred Dollars ($1,800.00) for rent accrued from July 1, 1957, to and including the month of October, 1958, and Court costs.

It Is Further Ordered that the Counter Claim filed by the defendant against the plaintiffs, Isidore Suchman, Benjamin Duhl, Paul Gaier, Sol Berger, and M. T. Broyhill & Sons Corporation, be, and it hereby is, dismissed with prejudice as to each of them.

It Is Further Ordered that the plaintiffs are not entitled to recover in this action any sum representing rent due or damages sustained for the use and occupancy of the subject premises by the defendant since this action was instituted to this date, which ruling is without prejudice to plaintiffs' right to institute separate actions for the recovery of such sums; to which ruling of the Court the plaintiffs excepted.

The defendant noted her exception to each of the foregoing rulings of the Court, and, having indicated her intention to apply to the Supreme Court of Appeals of Virginia for a Writ of Error and supersedeas from said judgment, she moved the Court to suspend the execution of the said judgment for a period of sixty (60) days from the entry of this Order for such purpose.

Upon Consideration Whereof, It Is Adjudged and Ordered that said motion be, and it hereby is, granted, provided that the defendant, or someone acting for her, shall, within ten (10) days from April 7, 1959, enter into a suspending bond before the Clerk of this Court in the penalty of Two Thousand Dollars ($2,000.00) with approved surety conditioned as the law directs.

/s/ Emery N. Hosmer
Judge

Entered this 15th day of April, 1959.

Seen:

Lewis and Tolbert, p.q.

By /s/ C. WYNNE TOLBERT
C. Wynne Tolbert

Seen and objected to:

/s/ GERALDINE DEFOE
Geraldine DeFoe, Defendant

Recorded in Common Law Order
Book 54, Page 380

A Copy, Teste;
H. BRUCE GREEN, *Clerk*.

By RACHEL H. WHITE
Deputy Clerk.

(Seal)

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 21st day of January, 1959.

The petition of M. T. Broyhill and Sons Corporation for a writ of error and supersedeas to a judgment rendered by the Circuit Court of Arlington County on the 12th day of September, 1958, as amended October 13, 1958, in a certain action at law then therein depending, wherein the said petitioner was plaintiff and Geraldine DeFoe was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition, and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said circuit court.

A Copy,

Teste:

H. G. TURNER
Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

AT LAW No. 6351

M. T. BROYHILL & SONS CORPORATION, a corporation,
Plaintiff

v.

GERALDINE DEFOE, *Defendant*

Order

This cause came on again this day to be heard on the defendant's motion to set aside the judgment awarded plaintiff for possession of Apartment 4, 2145 North Pierce Street, and damages as therein provided; upon the briefs filed on behalf of each of the parties hereto; and argument of counsel.

Upon consideration whereof, the Court being of the opinion that the M. T. Broyhill & Sons Corporation is not entitled by plaintiff's Exhibit No. 2 introduced herein to institute and maintain this action of unlawful detainer, and that the motion to set aside the said judgment should therefore be granted; it is,

ADJUDGED AND ORDERED that the motion to set aside the judgment for possession of the premises, and damages, entered herein as of May 28, 1958, be, and it hereby is, granted, and said judgment is hereby set aside, to which ruling of the Court plaintiff by counsel duly excepted.

Thereupon, plaintiff, by counsel, moved to amend the unlawful detainer summons in this case by designating the plaintiff therein as Isidore Suchman, Benjamin Duhl, Paul Gaier and Sol Berger, by their agent, M. T. Broyhill & Sons Corporation.

Upon consideration whereof the said motion to amend is hereby denied, to which ruling plaintiff, by counsel, again excepted.

Whereupon, the plaintiff, by counsel, having indicated its intention to apply to the Supreme Court of Appeals of Virginia for a writ of error and supersedeas from said judgment, it moved the Court to suspend the execution of the said judgment for a period of 60 days from the entry of this order for such purpose.

It is Adjudged and Ordered that said motion be, and it hereby is, granted provided that the plaintiff, or someone acting for it, shall within 15 days from the entry of this order enter into a suspending bond before the Clerk of this Court in the sum of $300, with approved surety, conditioned as the law directs.

Walter T. McCarthy
Judge

Entered this 12th day of September, 1958.

Virginia:

In the Circuit Court of Arlington County

At Law No. 6351

M. T. Broyhill & Sons Corporation, a corporation,
Plaintiff

v.

Geraldine DeFoe, *Defendant*

Notice

TO: Geraldine DeFoe
Apartment 4
2145 N. Pierce Street
Arlington, Virginia

Please take notice that on Friday, September 12, 1958, at 1:30 o'clock p.m., E.D.S.T., or as soon thereafter as he may be heard, the undersigned, Counsel for plaintiff, will tender to the Court for entry an order nunc pro tunc, as requested in Court's memorandum dated September 4, 1958.

At the same time, plaintiff, by Counsel, will move the Court for the entry of an order, as requested in item 2 of the Court's memorandum, but providing among other things:

1. That it be awarded judgment for rent which has accrued and become payable on the subject apartment, beginning July 1, 1957, continuing to and including September 1, 1958, in the total sum of $1,687.50.

2. In the alternative, that it be awarded judgment for rent in the amount accrued and payable at the time judgment was originally awarded the plaintiff.

C. Wynne Tolbert
C. Wynne Tolbert
Counsel for Plaintiff

IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

At Law No. 6351

M. T. Broyhill & Sons Corporation, *Plaintiff*

v.

Geraldine DeFoe, *Defendant*

This Cause coming on again the 3rd day of October, 1958 upon a Motion of the defendant filed in writing herein on said day entitled, "Motion for the Release of Bonds" and said Motion having been argued by the defendant in person and the plaintiff, counsel,

And It Appearing to the Court that the matters contained in said Motion and also in a Motion heretofore made by the plaintiff in writing on September 11, 1958, should have been considered and ruled upon by the Court in its Order entered herein on September 12, 1958;

And The Court being of the opinion that the said Motion of the plaintiff filed as aforesaid on September 11, 1958 should be denied.

And The Court being of the further opinion that said Motion of the defendant for the release of the bonds mentioned in the Motion of the defendant filed herein on October 3, 1958, should be granted,

It Is Now Adjudged and Ordered that the order of this Court of September 12, 1958 is amended as follows:

It Is further ordered by the Court:

(1) That this Motion of the plaintiff of September 11, 1958 is denied. To this ruling, the plaintiff noted its exception.

(2) That the Motion of the defendant for the release of the bonds mentioned in her Motion of October 3rd is hereby granted.

(3) That, upon the expiration of the time in which an appeal or writ of error may be applied for, or if applied for and refused, or if granted, until final judgment is entered by the Supreme Court of Appeals, the Court shall enter proper order herein releasing the bonds mentioned in the aforesaid Motion of the said defendant and directing the Clerk to make proper entries upon the margin of said bonds and to refund such securities therefor to the defendant herein.

(4) The provision of said order of September 12, 1958 as to appeal and suspension shall apply to this order as if repeated herein.

Entered: October 13, 1958.

[Seal].

Walter T. McCarthy
Judge

A Copy, Teste;
H. Bruce Green, *Clerk*
By:
Virginia C. Long
Deputy Clerk

Notice

TO: Miss Geraldine DeFoe
Apartment 4
2145 North Pierce Street
Arlington, Virginia

The undersigned owners of the Fort Bennett Apartments, and their duly authorized agent, do hereby give notice that any right by which you claim to occupy premises known as Apartment 4, 2145 North Pierce Street, Arlington, Virginia, either by virtue of your original 1-year lease, or otherwise, will be terminated October 15, 1958, and unless you vacate the premises by that day, legal proceedings will be instituted to recover possession thereof.

THIS NOTICE is given in addition to all other notices heretofore given and all other proceedings heretofore instituted by any of the undersigned parties in order to recover possession of the above-described premises and shall not be considered a waiver of any of the said previous actions to gain possession of the premises made by any of the said parties.

DATED this 15th day of September, 1958.

ISIDORE SUCHMAN
Isidore Suchman, by Counsel

BENJAMIN DUHL
Benjamin Duhl, by Counsel

PAUL GAIER
Paul Gaier, by Counsel

SOL BERGER
Sol Berger, by Counsel

M. T. BROYHILL & SONS CORP.
M. T. Broyhill & Sons Corporation
Agent for the above owners, by
Counsel

LEWIS AND TOLBERT
2054 14th Street North
Arlington, Virginia
Attorneys for owners and agents

By C. WYNNE TOLBERT
C. Wynne Tolbert

VIRGINIA:

IN THE COUNTY COURT OF ARLINGTON COUNTY

ISIDORE SUCHMAN, BENJAMIN DUHL, PAUL GAIER, SOL BERGER, and M. T. BROYHILL & SONS CORPORATION, a corporation, *Plaintiffs*

v.

GERALDINE DEFOE, Apartment 4, 2145 North Pierce Street, Arlington, Virginia, *Defendant*

Affidavit for Unlawful Detainer

STATE OF NEW YORK
CITY
COUNTY OF NEW YORK } to-wit:

THIS DAY personally appeared before me, , a Notary Public in and for the City County and State aforesaid, Benjamin Duhl, who first being duly sworn made oath that he is a part-owner of the premises hereinafter described and is duly authorized to execute this affidavit on behalf of his co-owners, Isidore Suchman, Paul Gaier, and Sol Berger; that Geraldine DeFoe unlawfully detains and withholds possession of Apartment 4, 2145 North Pierce Street, Arlington, Virginia, and should be removed therefrom for the following reasons:

1. Said owners, through their duly authorized agent, M. T. Broyhill & Sons Corporation, caused notice to be

served upon Geraldine DeFoe on July 3, 1957, that she was in arrears in the payment of rent for the month of July, 1957, in the sum of $112.50 per month, due and payable on the 1st day of July, 1957, and that she would be required to pay the rent due on or before five (5) days from the service of the notice or surrender possession of the said premises; that the defendant failed to pay the said rent as provided in said notice and continues to this date to unlawfully detain and withhold possession of the premises from the plaintiffs, although she has not withheld possession of the premises for more than three (3) years before this date.

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FIFE SOUTHERN BUILDING
COURTHOUSE SQUARE
ARLINGTON, VIRGINIA

[Seal]

2. The said owners of the premises again, on December 30, 1957, through their said agent, M. T. Broyhill & Sons Corporation, to whom they have lawfully delegated the management of the said premises, caused notice to be served upon the said defendant that any right by which she claimed to occupy the premises would be terminated effective January 31, 1958, but notwithstanding the said notice, she failed and refused to surrender possession according to said notice and still retains and withholds possessionto this date, although she has not retained possession for more than three (3) years before this date.

3. That by notice duly served upon the defendant on May 15, 1958, the said owners, through their duly authorized agent, M. T. Broyhill & Sons Corporation, caused notice to be served upon the said defendant that any right by which she claimed to occupy said premises would be terminated effective June 15, 1958, and that said notice was in addition to and not to be considered a waiver of any pre-

vious notices or actions to gain possession of the premises, but notwithstanding the said notice, she failed and refused to surrender possession according to said notice and still retains and withholds possession to this date, although she has not retained possession for more than three (3) years before this date.

4. That by notice duly served upon the defendant on September 15, 1958, the said owners and their duly authorized agent, M. T. Broyhill & Sons Corporation, caused notice to be served upon the said defendant that any right by which she claimed to occupy said premises would be terminated effective October 15, 1958, and that said notice was in addition to and not to be considered a waiver of any of the said previous actions to gain possession of the premises made by any of the said parties.

5. The plaintiffs further contend that the defendant is not a member of the Armed Forces of the United States.

6. Plaintiffs further allege that the defendant is in arrears in the payment of rent on the said premises for each and every month beginning July 1, 1957, to the date of the execution of this affidavit, at the rate of $112.50 per month, totaling One Thousand, Eight Hundred Dollars ($1,800.00)

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THE SOUTHERN BUILDING
COURTHOUSE SQUARE
ARLINGTON, VIRGINIA

[Seal]

for the said period. Plaintiffs further claim additional damages for use and occupancy of the premises at the rate of $112.50 per month for each and every month hereafter until they gain possession of the premises.

WHEREFORE, the plaintiffs allege that they are entitled to possession of Apartment 4, 2145 North Pierce Street,

Arlington, by reason of each of the grounds hereinabove recited and they move the Court to enter judgment against the said defendant for possession and for the sum of One Thousand, Eight Hundred Dollars ($1,800), plus Court costs, plus an additional sum equal to the rental which shall hereafter accrue at the rate of $112.50 per month until possession is obtained from the defendant.

BENJAMIN DUHL,
Benjamin Duhl, Co-Owner

SUBSCRIBED AND SWORN To before me, a Notary Public in my city and State aforesaid, this 29th day of October, 1958.

FREDERICK TIPPMANN
Notary Public

My Commission Expires

FREDERICK TIPPMANN
Notary Public, State of NewYork
No. 03-3989025
Qualified in Bronx County
Commission Expires March 30, 1959

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LEWIS AND TOLBERT
THE SOUTHERN BUILDING
COURTHOUSE SQUARE
ARLINGTON, VIRGINIA

[Seal]

Form No. 101—Code 1919, Sec. 5445. No. 12609

THE COMMONWEALTH OF VIRGINIA

To the Sheriff of the County of Arlington, Greeting:

WE COMMAND YOU, in the name of the Commonwealth, that you summon Geraldine DeFoe to appear before our County Court for the County of Arlington, at the Court House thereof, on the 13th day of November, 1958, at 11:00 o'clock a.m. to answer the complaint of Isidore Suchman.

Benjamin Duhl, Paul Gaier, Sol Berger and M. T. Broyhill & Sons Corporation, a corporation that the said defendant is in possession and unlawfully withholds from the said plaintiff certain premises, to wit: Apartment 4, 2145 North Pierce Street, Arlington, Virginia. Plaintiffs claim damages for use and occupancy in the sum of $1,800.00 plus added damages from Nov. 1, 1958 at the rate of $112.50 per month and possession which said possession has not been so withheld for a period of more than three years next preceding the suing out of this summons. And have then there this writ.

Witness, H. Bruce Green, Clerk of our said Court, at the Court House, the 31st day of October, 1958, in the 183rd year of the Commonwealth.

H. Bruce Green, *Clerk.*
by: Freda S. Woodyard, *Deputy Clerk*
[A copy to be delivered to each defendant.]

IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

At Law No. 6966

Isidore Suchman, et al., *Plaintiffs*

v.

Geraldine DeFoe, *Defendant*

Memorandum

FROM: Walter T. McCarthy, *Judge*

TO: Oren L. Lewis, Esq., Counsel for Plaintiffs
Geraldine DeFoe, Defendant in person

The Court has considered the Motion for Summary Judgment filed in behalf of the plaintiffs.

The Court is of the opinion that the Motion should be denied for the following reasons:

(1) The defenses raised by the "Answer" are legal defenses and not factual.

(2) While the defense is called an "Answer" it is actually a Demurrer, a Motion to Strike, or a Motion to Quash.

(3) Whatever its proper designation, when and if it is held to be insufficient in law, the defendant will be given time to answer.

(4) M. T. Broyhill & Sons Corporation are not entitled to a judgment.

December 19, 1958.

WALTER T. McCARTHY
Judge